

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTONJAMES FRANKLIN SNYDER,  
Plaintiff,

vs.

MANUEL VALANZEULA,

Defendant.

NO. CV-11-5009-EFS

ORDER DISMISSING FIRST AMENDED  
COMPLAINT

1915(g)

Before the Court, without oral argument, is Plaintiff's First Amended Complaint, ECF No. 19. Plaintiff, formerly a prisoner at the Benton County Jail, is now residing in Newport, Washington. He is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

An amended complaint supercedes the original complaint, *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), and must be complete in itself without reference to the prior or superceded pleading. Therefore, "[a]ll causes of action alleged in an original complaint which are not alleged in an amended complaint are waived." *King*, 814 F.2d at 567 (citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.1981)); accord *Forsyth*, 114 F.3d at 1474. Because Plaintiff does not name Aaron Cole as a Defendant in his First Amended Complaint, **IT IS ORDERED**: Defendant Aaron Cole is **TERMINATED** from this action.

ORDER DISMISSING FIRST AMENDED COMPLAINT -- 1

1 By Order filed March 10, 2011, the Court advised Plaintiff of the  
2 deficiencies of his complaint and directed him to amend or voluntarily  
3 dismiss, ECF No. 17. The Court cautioned Plaintiff if he chose to amend  
4 and the Court found the amended complaint failed to state a claim upon  
5 which relief may be granted, it would be dismissed and such dismissal  
6 would count as one of the dismissals under 28 U.S.C. § 1915(g). After  
7 review of the First Amended Complaint, the Court finds Plaintiff has  
8 failed to cure the deficiencies of the initial complaint.

9 Mr. Snyder states he was "in chemical dependency" and Defendant  
10 Valenzuela was a Counselor with the Department of Corrections/Benton  
11 County Jail. Plaintiff claims that on or about November 1, 2010,  
12 Defendant Valenzuela "released what Plaintiff said during treatment,"  
13 and also seized and read Plaintiff's legal paperwork. Plaintiff asserts  
14 these actions violated his First, Fourth, Fifth, Sixth and Fourteenth  
15 Amendment rights.

16 Plaintiff also complains that on or about October 25, 2010,  
17 Defendant Valenzuela "quoted and practiced Christianity in a public  
18 setting with no certification." Plaintiff asserts this violated his  
19 First, Fourth, Fifth, and Fourteenth Amendment rights. Plaintiff seeks  
20 monetary damages for "negligence."

21 Even liberally construing these allegations in the light most  
22 favorable to Plaintiff, he has failed to present any facts showing a  
23 constitutional violation. Negligence is not actionable under § 1983.  
24 *Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986). To the extent  
25 Plaintiff is asserting he was deprived of his "legal paperwork," he has  
26 presented no facts showing he suffered an actual injury to his access to  
27

1 the courts. See *Lewis v. Casey*, 518 U.S. 343, 351-52 (1996). Plaintiff  
2 does not claim he missed a deadline or was unable to file an action  
3 challenging his conviction or conditions of confinement due to Defendant  
4 Valenzuela's actions. *Id.* at 348.

5 For the reasons set forth above and in the Order to Amend or  
6 Voluntarily Dismiss, **IT IS ORDERED:** the complaint is **DISMISSED with**  
7 **prejudice** for failure to state a claim upon which relief may be granted.

8 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner  
9 who brings three or more civil actions or appeals which are dismissed as  
10 frivolous or for failure to state a claim will be precluded from  
11 bringing any other civil action or appeal *in forma pauperis* "unless the  
12 prisoner is under imminent danger of serious physical injury." 28  
13 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory  
14 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's  
15 complaint may count as one of the three dismissals allowed by 28 U.S.C.  
16 § 1915(g) and may adversely affect his ability to file future claims.

17 **IT IS SO ORDERED.** The District Court Executive is directed to  
18 enter this Order, enter judgment, forward copies to Plaintiff at his  
19 last known address, and close the file. The District Court Executive is  
20 further directed to forward a copy of this Order to the Office of the  
21 Attorney General of Washington, Criminal Justice Division. The Court  
22 certifies any appeal of this dismissal would not be taken in good faith.

23 **DATED** this 18<sup>th</sup> day of May 2011.

24  
25 \_\_\_\_\_  
s/Edward F. Shea

26 EDWARD F. SHEA

United States District Judge

27 Q:\Civil\2011\11cv5009efs-5-18-dis1915g.wpd